

Adopted	Rejected
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COMMITTEE REPORT

YES: 10

NO: 0

MR. SPEAKER:

Your Committee on Public Safety and Homeland Security, to which was referred House Bill 1776, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 35-33-5-1 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A court may
- 4 issue warrants only upon probable cause, supported by oath or
- 5 affirmation, to search any place for any of the following:
- 6 (1) Property which is obtained unlawfully.
- 7 (2) Property, the possession of which is unlawful.
- 8 (3) Property used or possessed with intent to be used as the means
- 9 of committing an offense or concealed to prevent an offense from
- 10 being discovered.
- 11 (4) Property constituting evidence of an offense or tending to
- 12 show that a particular person committed an offense.
- 13 (5) Any person.
- 14 (6) Evidence necessary to enforce statutes enacted to prevent
- 15 cruelty to or neglect of children.

(7) A firearm possessed by a person who is dangerous (as defined in IC 35-47-13-1).

(b) As used in this section, "place" includes any location where property might be secreted or hidden, including buildings, persons, or vehicles.

SECTION 2. IC 35-33-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(3) A firearm that has been seized from a person who is dangerous (as defined in IC 35-47-13-1) shall be retained, returned, or disposed of in accordance with IC 35-47-13.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance

1 with an order of the court trying the cause.

2 (e) A law enforcement agency may destroy or cause to be destroyed
3 chemicals or controlled substances associated with the illegal
4 manufacture of drugs or controlled substances without a court order if
5 all the following conditions are met:

6 (1) The law enforcement agency collects and preserves a
7 sufficient quantity of the chemicals or controlled substances to
8 demonstrate that the chemicals or controlled substances were
9 associated with the illegal manufacture of drugs or controlled
10 substances.

11 (2) The law enforcement agency takes photographs of the illegal
12 drug manufacturing site that accurately depict the presence and
13 quantity of chemicals and controlled substances.

14 (3) The law enforcement agency completes a chemical inventory
15 report that describes the type and quantities of chemicals and
16 controlled substances present at the illegal manufacturing site.

17 The photographs and description of the property shall be admissible
18 into evidence in place of the actual physical evidence.

19 (f) For purposes of preserving the record of any conviction on
20 appeal, a photograph demonstrating the nature of the property, and an
21 adequate description of the property must be obtained before the
22 disposition of it. In the event of a retrial, the photograph and description
23 of the property shall be admissible into evidence in place of the actual
24 physical evidence. All other rules of law governing the admissibility of
25 evidence shall apply to the photographs.

26 (g) The law enforcement agency disposing of property in any
27 manner provided in subsection (b), (c), or (e) shall maintain certified
28 records of any such disposition. Disposition by destruction of property
29 shall be witnessed by two (2) persons who shall also attest to the
30 destruction.

31 (h) This section does not affect the procedure for the disposition of
32 firearms seized by a law enforcement agency.

33 (i) A law enforcement agency that disposes of property by auction
34 under this section shall permanently stamp or otherwise permanently
35 identify the property as property sold by the law enforcement agency.

36 (j) Upon motion of the prosecuting attorney, the court shall order
37 property seized under IC 34-24-1 transferred, subject to the perfected
38 liens or other security interests of any person in the property, to the

appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

SECTION 3. IC 35-47-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person desiring a license to carry a handgun shall apply:

(1) to the chief of police or corresponding law enforcement officer of the municipality in which the applicant resides;

(2) if that municipality has no such officer, or if the applicant does not reside in a municipality, to the sheriff of the county in which the applicant resides after the applicant has obtained an application form prescribed by the superintendent; or

(3) if the applicant is a resident of another state and has a regular place of business or employment in Indiana, to the sheriff of the county in which the applicant has a regular place of business or employment.

(b) The law enforcement agency which accepts an application for a handgun license shall collect a ten dollar (\$10) application fee, five dollars (\$5) of which shall be refunded if the license is not issued. Except as provided in subsection (h), the fee shall be:

(1) deposited into the law enforcement agency's firearms training fund or other appropriate training activities fund; and

(2) used by the agency for the purpose of:

(A) training law enforcement officers in the proper use of firearms or other law enforcement duties; or

(B) purchasing for the law enforcement officers employed by the law enforcement agency firearms, or firearm related equipment, or both.

The state board of accounts shall establish rules for the proper accounting and expenditure of funds collected under this subsection.

(c) The officer to whom the application is made shall ascertain the applicant's name, full address, length of residence in the community, whether the applicant's residence is located within the limits of any city or town, the applicant's occupation, place of business or employment, criminal record, if any, and convictions (minor traffic offenses excepted), age, race, sex, nationality, date of birth, citizenship, height, weight, build, color of hair, color of eyes, scars and marks, whether the applicant has previously held an Indiana license to carry a handgun and,

1 if so, the serial number of the license and year issued, whether the
2 applicant's license has ever been suspended or revoked, and if so, the
3 year and reason for the suspension or revocation, and the applicant's
4 reason for desiring a license. The officer to whom the application is
5 made shall conduct an investigation into the applicant's official records
6 and verify thereby the applicant's character and reputation, and shall in
7 addition verify for accuracy the information contained in the
8 application, and shall forward this information together with his
9 recommendation for approval or disapproval and one (1) set of legible
10 and classifiable fingerprints of the applicant to the superintendent.

11 (d) The superintendent may make whatever further investigation the
12 superintendent deems necessary. Whenever disapproval is
13 recommended, the officer to whom the application is made shall
14 provide the superintendent and the applicant with the officer's complete
15 and specific reasons, in writing, for the recommendation of disapproval.

16 (e) If it appears to the superintendent that the applicant has a proper
17 reason for carrying a handgun and is of good character and reputation
18 and a proper person to be so licensed, the superintendent shall issue to
19 the applicant a qualified or an unlimited license to carry any handgun
20 lawfully possessed by the applicant. The original license shall be
21 delivered to the licensee. A copy shall be delivered to the officer to
22 whom the application for license was made. A copy shall be retained
23 by the superintendent for at least four (4) years. This license shall be
24 valid for a period of four (4) years from the date of issue. The license
25 of police officers, sheriffs or their deputies, and law enforcement
26 officers of the United States government who have been honorably
27 retired by a lawfully created pension board or its equivalent after
28 twenty (20) or more years of service, shall be valid for the life of such
29 individuals. However, such lifetime licenses are automatically revoked
30 if the license holder does not remain a proper person.

31 (f) At the time a license is issued and delivered to a licensee under
32 subsection (e), the superintendent shall include with the license
33 information concerning handgun safety rules that:

34 (1) neither opposes nor supports an individual's right to bear arms;
35 and

36 (2) is:

37 (A) recommended by a nonprofit educational organization that
38 is dedicated to providing education on safe handling and use

- 1 of firearms;
- 2 (B) prepared by the state police department; and
- 3 (C) approved by the superintendent.

4 The superintendent may not deny a license under this section because
 5 the information required under this subsection is unavailable at the time
 6 the superintendent would otherwise issue a license. The state police
 7 department may accept private donations or grants to defray the cost of
 8 printing and mailing the information required under this subsection.

9 (g) A license to carry a handgun shall not be issued to any person
 10 who:

- 11 (1) has been convicted of a felony;
- 12 **(2) has had a license to carry a handgun suspended, unless the**
 13 **person's license has been reinstated;**
- 14 ~~(2)~~ (3) is under eighteen (18) years of age;
- 15 ~~(3)~~ (4) is under twenty-three (23) years of age if the person has
 16 been adjudicated a delinquent child for an act that would be a
 17 felony if committed by an adult; or
- 18 ~~(4)~~ (5) has been arrested for a Class A or Class B felony, or any
 19 other felony that was committed while armed with a deadly
 20 weapon or that involved the use of violence, if a court has found
 21 probable cause to believe that the person committed the offense
 22 charged.

23 In the case of an arrest under subdivision ~~(4)~~, (5), a license to carry a
 24 handgun may be issued to a person who has been acquitted of the
 25 specific offense charged or if the charges for the specific offense are
 26 dismissed. The superintendent shall prescribe all forms to be used in
 27 connection with the administration of this chapter.

28 (h) If the law enforcement agency that charges a fee under
 29 subsection (b) is a city or town law enforcement agency, the fee shall
 30 be deposited in the law enforcement continuing education fund
 31 established under IC 5-2-8-2.

32 (i) If a person who holds a valid license to carry a handgun issued
 33 under this chapter:

- 34 (1) changes the person's name; or
 - 35 (2) changes the person's address;
- 36 the person shall, not later than sixty (60) days after the date of the
 37 change, notify the superintendent, in writing, of the person's new name
 38 or new address.

(j) The state police shall indicate on the form for a license to carry a handgun the notification requirements of subsection (i).

SECTION 4. IC 35-47-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 13. Proceedings for the Seizure and Retention of a Firearm

Sec. 1. As used in this chapter, "dangerous" means:

- (1) a person presents an imminent risk of personal injury to the person or to another person;
- (2) a person may present a risk of personal injury to the person or to another person in the future; or
- (3) if the person has a mental illness that may be controlled by medication, the person has not demonstrated a pattern of voluntarily and consistently taking the person's medication while not under supervision.

The fact that a person has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the person is dangerous.

Sec. 2. A circuit or superior court may issue a warrant to search for and seize a firearm in possession of a person who is dangerous if:

- (1) a law enforcement officer states under oath or affirmation that the law enforcement officer has probable cause to believe that the person is:
 - (A) dangerous; and
 - (B) in possession of a firearm;
- (2) the statement specifically describes the location of the firearm; and
- (3) the circuit or superior court determines that probable cause exists to believe that the person is:
 - (A) dangerous; and
 - (B) in possession of a firearm.

Sec. 3. (a) If a law enforcement officer seizes a firearm from a person whom the law enforcement officer believes to be dangerous without obtaining a warrant, the law enforcement officer shall submit to the circuit or superior court having jurisdiction over the person believed to be dangerous a written statement under oath or

1 affirmation describing the basis for the law enforcement officer's
2 belief that the person is dangerous.

3 (b) The court shall review the written statement described in
4 subsection (a). If the court finds that probable cause exists to
5 believe that the person is dangerous, the court shall order the law
6 enforcement agency having custody of the firearm to retain the
7 firearm. If the court finds that there is no probable cause to believe
8 that the person is dangerous, the court shall order the law
9 enforcement agency having custody of the firearm to return the
10 firearm to the person.

11 (c) This section does not authorize a law enforcement officer to
12 perform a warrantless search or seizure if a warrant would
13 otherwise be required.

14 Sec. 4. (a) Unless a court orders the return of the firearm under
15 section 3(b) of this chapter, the law enforcement agency that seized
16 the firearm shall retain custody of the firearm.

17 (b) If a court issued a warrant to seize a firearm under this
18 chapter, the law enforcement officer who served the warrant shall,
19 not later than forty-eight (48) hours after the warrant was served,
20 file a return with the court, stating:

- 21 (1) that the warrant was served;
- 22 (2) the time and date on which the warrant was served;
- 23 (3) the name and address of the person named in the warrant;
- 24 and
- 25 (4) the quantity and identity of any firearms seized by the law
- 26 enforcement officer.

27 Sec. 5. (a) Not later than fourteen (14) days after a return is filed
28 under section 4 of this chapter, or a written statement is filed under
29 section 3 of this chapter, the court shall conduct a hearing to
30 determine whether the seized firearm should be:

- 31 (1) returned to the person from whom the firearm was seized;
- 32 or
- 33 (2) retained by the law enforcement agency having custody of
- 34 the firearm.

35 (b) The court shall set the hearing date as soon as possible after
36 the return is filed under section 4 of this chapter. The court shall
37 inform the:

- 38 (1) prosecuting attorney; and

(2) person from whom the firearm was seized;
of the date, time, and location of the hearing. The court may
conduct the hearing at a facility or other suitable place not likely to
have a harmful effect upon the person's health or well-being.

Sec. 6. (a) At a hearing conducted under section 5 of this
chapter, the state has the burden of proving all material facts by
clear and convincing evidence.

(b) If the court determines that the state has proved by clear and
convincing evidence that the person is dangerous, the court may
order that the law enforcement agency having custody of the seized
firearm retain the firearm for not more than one (1) year. In
addition, if the person has received a license to carry a handgun,
the court shall suspend the person's license to carry a handgun. If
the court determines that the state has failed to prove that the
person is dangerous, the court shall order the law enforcement
agency having custody of the firearm to return it to the person
from whom it was seized.

(c) If a court orders a law enforcement agency to retain a
firearm, the court shall establish a date certain upon which the
firearm is to be returned to the person from whom it was seized,
unless the firearm retention period is extended under section 8 of
this chapter.

Sec. 7. If the court determines that:

(1) a person is dangerous; and

(2) a firearm seized from the person is owned by another
person;

the court may order the law enforcement agency having custody of
the firearm to return the firearm to the owner.

Sec. 8. (a) If the court has ordered the law enforcement agency
having custody of a firearm to retain the firearm under section 6 of
this chapter, the state may seek to extend the firearm retention
period by filing a petition to extend the firearm retention period.

(b) A petition to extend the firearm retention period:

(1) must be filed at least thirty (30) days before the date
certain described in section 6(c) of this chapter; and

(2) may not request that the court order the law enforcement
agency to retain a firearm for a period longer than the
duration of the original retention period established by the

- 1 court under section 6 of this chapter.
- 2 (c) Upon receipt of a petition to extend the firearm retention
- 3 period, the court shall:
- 4 (1) set a date for the hearing; and
- 5 (2) inform all parties to the hearing of the date, time, and
- 6 location of the hearing.
- 7 (d) A hearing under this section shall be conducted according to
- 8 the same standards and in the same manner as set forth in sections
- 9 5 and 6 of this chapter.
- 10 (e) If:
- 11 (1) the court finds that the state has failed to prove that the
- 12 person is still dangerous; or
- 13 (2) the state has not timely filed a petition to extend the
- 14 firearm retention period;
- 15 the court shall order the law enforcement agency having custody
- 16 of the firearm to return the firearm to the person on the date
- 17 certain described in section 6(c) of this chapter. In addition, if the
- 18 court suspended the person's license to carry a handgun under
- 19 section 6(b) of this chapter, the court shall reinstate the person's
- 20 license to carry a handgun, unless it appears that the person is no
- 21 longer a proper person.
- 22 Sec. 9. If at least five (5) years have passed since the court
- 23 conducted the first hearing to retain a firearm under this chapter,
- 24 after giving notice to the parties and conducting a hearing, the
- 25 court may order the law enforcement agency having custody of the
- 26 firearm to destroy or otherwise permanently dispose of the firearm.
- (Reference is to HB 1776 as introduced.)

and when so amended that said bill do pass.

Representative Ruppel